

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

<b>IN RE:</b>	§	<b>CHAPTER 11</b>
	§	
<b>ALLAN L. REAGAN</b>	§	<b>CASE NO. 20-11161-TMD</b>
	§	<b>Hon. Tony M. Davis</b>
	§	
<b>Debtor.</b>	§	

**MOTION OF MERLE HAY INVESTORS, LLC TO DEEM  
LATE FILED PROOF OF CLAIM AS TIMELY**

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO  
YOUR INTERESTS.**

**IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY-ONE (21)  
DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED  
HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.**

**A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO  
BE HELD.**

Merle Hay Investors, LLC (“Creditor”), files this is Motion to deem late filed proof of claim as timely, and in support thereof, states as follows:

**I.**

**Factual Background**

1. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 157(b)(2)(A) and (B). Venue of this matter is proper in this Court pursuant to 28 U.S.C. § 1409.

2. On or about April 4, 2013, Creditor and Flix Brewhouse Iowa, LLC (“Flix”) entered into a commercial real property lease whereby as Tenant leased from Creditor approximately 37,192 square feet of space on two levels in the Merle Hay Mall located in Des Moines, IA to be operated a movie theater (“Lease”). Flix is an entity own and operated by the

Allan L. Reagan (“Debtor”). On June 4, 2013, Debtor entered into a personal guaranty of Flix’s obligations under the Lease (“Guaranty”).

3. On August 24, 2020, Flix entered in a second lease amendment with Creditor wherein the Debtor signed on behalf of the tenant and personally reaffirmed his Guaranty to Creditor.

4. Less than two months later, on October 22, 2020 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

5. Prior to the Petition Date, the Debtor was in default under the Guaranty for failing to make full and timely rent payments.

6. The Debtor’s Schedules filed in this case listed Creditor as a creditor arising out of the Guaranty.

7. During the month of December, 2020, Creditor’s counsel informally objected to the Debtor’s attempt to prevent the disclosure of confidential information contained on Official Form 426 and on December 21, 2020 and January 4, 2021 via email communications between the parties discussed that the Debtor would provide the information under a protective order. To date, Debtor’s counsel has failed to forward the requested information.

8. There is no question that Debtor and his counsel were aware of Creditor and its claims would could be deemed an informal proof of claim.

9. The confirmation hearing on the Debtor’s chapter 11 is set for March 22, 2021.

10. The proof of claim bar was set as February 16, 2021.

11. On the evening of February 15, 2021, David Blau, Creditor’s primary attorney in this matter presented to a local Metropolitan Detroit hospital and was admitted to the hospital and remained in the hospital until February 24, 2021. As a result the partially prepared proof of

claim was not filed by February 16, 2021. Creditor's counsel was diagnosed with seizures and a brain tumor and was not able to designate another attorney to file the claim on February 16, 2021 as he had originally planned to file the proof of claim.

12. Creditor filed its proof of claim on March 5, 2021 which was assigned claim number #21.

13. On March 9, 2021, Debtor filed its first amended proposed plan of reorganization.

14. At this time, the Disclosure Statement and Chapter 11 Plan are still awaiting the confirmation hearing.

15. Following the filing of the proof of claim, Creditor's counsel sought consent of the subchapter V trustee and Debtor's counsel deeming the claim timely filed. Neither has provided consent.

## **II.**

### **RELIEF REQUESTED AND BASIS THEREFOR**

11. Federal Rule of Bankruptcy Procedure 9006(b) allows the claims bar date to be extended where the failure to timely act "was the result of excusable neglect."

12. In *Pioneer Inv. Servs. v. Brunswick Assoc. Ltd. P'ship*, the United States Supreme Court, taking note of the "the language of the Rule [and] the evident purposes behind it," articulated the standard for what constitutes "excusable neglect" on an untimely filed Chapter 11 Proof of Claim. 507 U.S 380, 388 (1993).

13. The Court found that "Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstance beyond the party's control. *Id.*

14. The Court contrasted a Chapter 11 claim with a Chapter 7 claim, finding that the aim of Chapter 11 is to "rehabilitat[e] the debtor and avoid [] forfeitures by creditors," that the

emphasis of the Court is not as much on prompt closure as with Chapter 7 claim and that adopting a “flexible understanding” of excusable neglect is in full “accord [] with the policies underlying Chapter 11 and the Bankruptcy Rules.: *Id.* at 389.

15. Based on the foregoing facts, Creditor hereby requests the Court to deem claim number 21 filed on Creditor’s behalf on March 5, 2021 to be deemed a timely filed claim. A copy of the filed Proof of Claim is attached hereto as Exhibit “A”.

16. In determining whether to grant Creditor’s request to allow its claim as timely filed, the Court is to follow the "excusable neglect" standard. *See In Re: Eagle Business Manufacturing, Inc.*, 62 F.3d 730, 736 (5<sup>th</sup> Cir. 1995) (citing *Pioneer Inv. Services Co. v. Brunswick Associates, Ltd., Partnership*, 507 U.S. 380, 113 S.Ct. 1489, 1491-92, 123 L.Ed.2d 74 (1993)). The Court is to consider the totality of the circumstances, and determine whether excusable neglect has been shown, considering the following factors:

The danger and prejudice to the debtor, the length of the delay and the potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.

*Pioneer*, 507 U.S. at 395.

17. The Court stressed, however that “the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.” *Id.* *See also Chemetron Corp. v. Jones*, 72 F.3d 341, 349-50 (3d Cir. 1995) (stressing that the totality of the circumstances must be examined in the excusable neglect inquiry).

18. Furthermore, the courts have held that all of the four factors must be considered and balanced; no one factor trumps the others.

19. These factors support the granting of the request to allow late filed claim in this instance. Significantly, because the Plan has not been approved and the ballots have not been

counted, there is no delay or danger or prejudice to the Debtor. Furthermore, the length of delay was a couple of weeks, and is therefore negligible. Likewise, there will be little, if any, impact on the judicial proceedings since an amended plan was filed on March 9, 2021 and the confirmation hearing is on March 22, 2021. The Debtor was well aware of his liability to Creditor and his listed Creditor's claim in his schedules. Though the ability to timely file was within Creditor's control, Creditor acted here in good faith due to an unexpected event. The reason for the delay was not within the control of Creditor's counsel and was not caused by his inadvertence. Finally, the Creditor and its counsel have not taken any action that could be perceived as acting in bad faith. The Supreme Court has stressed that the excusable neglect inquiry is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Id.* Based on the circumstances in the present situation, the Court should allow the Creditor's filed claim as timely.

WHEREFORE, the Creditors seeks entry of an order granting the instant motion, deeming claim #21 as timely filed and granting such other and further relief as the Court deems just and equitable.

Dated: March 10, 2021

Respectfully submitted,

By: /s/ Stephen A. Roberts  
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and

CLARK HILL, PLC

/s/ David M. Blau

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*Attorneys for Merle Hay Investors LLC*

**CERTIFICATE OF SERVICE**

By my signature below, I hereby certify that a true and correct copy of the foregoing Motion was served via CM/ECF to all those entitled to such notice, and via U.S. mail to the parties listed on the attached Service List on March 10, 2021.

/s/ Stephen A. Roberts

Stephen A. Roberts

**SERVICE LIST**

**Debtor**

Allan L. Reagan  
585 River Run  
Leander, TX 78641

**Trustee**

Michael Colvard  
Weston Center  
112 East Pecan Street, Suite 1616  
San Antonio, TX 78205

**Twenty-largest creditors:**

Madison/East Towne LLC  
c/o CBL & Associates  
2030 Hamilton Place Blvd.  
Chattanooga, TN 37421-6000

Village @ La Orilla  
Attn: Philip Lindborg  
12809 Donette Court N.E.  
Albuquerque, NM 87112

Martin S. Headley  
1500 Knobb Hill Lane  
Paoli, PA 19301

Comerica Bank  
Attn: Lesley B. Higginbotham, VP  
Special Assets Group - Texas Market  
P.O. Box 650282  
Dallas, TX 75265-0282

Ann E. Headley  
1500 Knobb Hill Lane  
Paoli, PA 19301

Wyndham Franchisor LLC  
22 Sylvan Way  
Parssipany, NJ 07054

Spain Family IX LLC  
c/o Patrick J. Spain  
11809 Oak Branch Dr.  
Austin, TX 78737

Bennett Living Trust  
Attn: Michael Bennett  
2321 Abbot Kinney Blvd.  
Venice, CA 90291

Gary J. Neumayer  
2201 Berrywood Lane  
Bloomington, IL 61704-2449

Headley Investments, LP  
1500 Knobb Hill Lane  
Paoli, PA 19301

Frances and Wayne Lee  
468 Jade Tree Lane  
Monterey Park, CA 91754

Capital One Spark Visa for Business  
P.O. Box 30285  
Salt Lake City, UT 84130-0285

Chase Ink Card for Business  
P.O. Box 15298  
Wilmington, DE 19850-5298

Ford Motor Credit Corp.  
P.O. Box 105704  
Atlanta, GA 30348

Comerica Bank  
Dept. #166901  
P.O. Box 55000  
Detroit, MI 48255-1669

Citicard Advantage Mastercard  
Cardmember Services  
P.O. Box 6062  
Sioux Falls, SD 57117

Discover Card  
Billing Inquiries  
P.O. Box 30943  
Salt Lake City, UT 84130

Chase Visa Mileage Plus  
P.O. Box 15298  
Wilmington, DE 19850-5298

Comerica Bank  
Attn: J.B. Stueckler, AVP  
300 W. Sixth Street  
Austin, TX 78701

**Unsecured Creditors/**

**Interested Parties**

3401 Hoteliers, LP  
Attn: Allan Reagan  
2000 S. IH-35, Suite Q11  
Round Rock, TX 78681

83<sup>rd</sup> Street Development, LLC  
Attn: Trent G. Moore  
9000 Cameron Parkway  
Oklahoma City, OK 73114

Action Propane  
2601 S. Hwy. 183  
Leander, TX 78641

ADT  
P.O. Box 660418  
Dallas, TX 75266

Al Clawson Disposal  
P.O. Box 416  
Jarrel, TX 76537

AT&T  
P.O. Box 5001  
Carol Stream, IL 60197

AT&T (DirectTV)  
P.O. Box 5014  
Carol Stream, IL 60197

Bank of Austin  
Attn: David H. Marks, SVP  
8611 N. Mopac Exp., Suite 101  
Austin, TX 78759

DT Chandler, LLC  
Attn: Bret Anderson, Manager  
140 E. Rio Salado Parkway, Unit 305  
Tempe, AZ 85281

FB Capital, LLC  
Attn: Allan Reagan  
2000 S. IH-35, Suite Q11  
Round Rock, TX 78681

Flix Brewhouse AZ, LLC  
Attn: Allan Reagan  
2000 S. IH-35, Suite Q11  
Round Rock, TX 78681

Flix Brewhouse Holdco, LLC  
Attn: Allan Reagan  
2000 S. IH-35, Suite Q11  
Round Rock, TX 78681

Flix Brewhouse Indiana, LLC  
Attn: Allan Reagan  
2000 S. IH-35, Suite Q11  
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Flix Brewhouse Iowa, LLC  
Attn: Allan Reagan  
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Flix Brewhouse NM, LLC  
Attn: Allan Reagan  
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Flix Brewhouse OK, LLC  
Attn: Allan Reagan  
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Flix Brewhouse SAT, LLC  
Attn: Allan Reagan  
2000 S. IH-35, Suite Q11  
Round Rock, TX 78681

Flix Brewhouse III, LLC (Mansfield)  
Attn: Allan Reagan  
2000 S. IH-35, Suite Q11  
Round Rock, TX 78681

Flix Brewhouse Texas IV, LLC  
Attn: Allan Reagan  
2000 S. IH-35, Suite Q11  
Round Rock, TX 78681

Flix Brewhouse Texas V, LLC  
Attn: Allan Reagan  
2000 S. IH-35, Suite Q11  
Round Rock, TX 78681

Flix Brewhouse TX II, LLC  
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Round Rock, TX 78681

Flix Brewhouse TX IV, LLC  
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Flix Brewhouse Wi, LLC  
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Flix Entertainment, LLC  
Attn: Allan Reagan  
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Round Rock, TX 78681

Hospitality Investors, Inc.  
Attn: Allan Reagan  
2000 S. IH-35, Suite Q11  
Round Rock, TX 78681

Internal Revenue Services  
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Lone Star National Bank  
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Mikeska Monahan & Peckham, P.C.  
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Austin, TX 78701

Pedernales Electric Company  
P.O. Box 1  
Johnson City, TX 78636

Poolwerx by Blue Bottom Pool Supply  
3021 S. IH35, Suite 140  
Round Rock, TX 78664

Prudential Mortgage Capital Company LLC  
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100 Mulberry St., Gateway Center 4  
8<sup>th</sup> Floor  
Newark, NJ 07102

ROP Artcraft LLC  
Attn: Adam Frank  
5678 N. mesa St.  
El Paso, TX 79912

Round Rock Business Park, LLC  
Attn: Allan Reagan  
2000 S. IH-35, Suite Q11  
Round Rock, TX 78681

RPT Realty, L.P.  
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Securian/Minnesota Life Insurance Co.  
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Round Rock, TX 78681

Southwestern Retail Properties III, LP  
Attn: Allan Reagan  
2000 S. IH-35, Suite Q11  
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Spectrum  
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City of Industry, CA 91716-0074

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c/o Berkadia Commercial Mortgage LLC  
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Midvale, UT 84047

U.S. Trustee  
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Austin, TX 78701

Wells Fargo Auto  
MAC T9017-026  
P.O. Box 168-48  
Irving, TX 75016-8048

Williamson County Tax Office  
904 S. Main Street  
Georgetown, TX 78626

**Parties Filing Claims**

Discover Bank/Discover Products  
PO Box 3025  
New Albany, OH 43054-3025

JPMorgan Chase Bank, N.A.  
c/o National Bankruptcy Services LLC  
P.O. Box 9013  
Addison, TX 75001

Capital One Bank (USA) N.A.  
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4515 N. Santa Fe Ave.  
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